

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Z-TEL COMMUNICATIONS, INC.	}	
	}	
Complainant	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

VERIFIED RESPONSE OF ILLINOIS BELL TELEPHONE COMPANY
TO REQUEST FOR EMERGENCY RELIEF

Illinois Bell Telephone Company ("Ameritech Illinois") submits this verified response to Z-Tel Communications, Inc.'s ("Z-Tel's") request for emergency relief pursuant to Section 13-515(e) of the Public Utilities Act ("Act"). Z-Tel's request for emergency relief was included in its Verified Complaint and Request for Emergency Relief filed on February 22, 2002.

Z-Tel's request should be denied. While Ameritech Illinois acknowledges that there are some deficiencies in its 836 reports to Z-Tel, Z-Tel's complaint exaggerates their current severity and their effect on Z-Tel's business. The fact is that line loss notifications are one of the clearly delineated issues that are already being addressed by this Commission in its Section 271 investigation, ICC Docket No. 01-0662, and SBC Ameritech has committed its resources to resolving these issues in the shortest possible time frame. The emergency relief requested by Z-Tel (cessation of all Winback marketing activity) would not facilitate the resolution of these issues. The relief

requested is punitive rather than remedial, and is, therefore, unauthorized under the Act. Furthermore, the relief requested is so overbroad and unwarranted that it would infringe upon Ameritech Illinois' First Amendment and due process rights.

BACKGROUND

On February 19, 2002, Z-Tel served Ameritech Illinois with a letter notice pursuant to Section 13-515(c) of the Act that it would file a complaint with the Commission unless Ameritech Illinois agreed to stop soliciting current Z-Tel customers who were former Ameritech Illinois customers with Winback offers. The stated rationale for this request was "Ameritech's provision of discriminatory Line Loss Notification information to Z-Tel, and the discriminatory use of that information to solicit Z-Tel customers." A copy of the letter is attached as Exhibit H to the Complaint.

More specifically, Z-TEL complained that Ameritech "continues to provide inaccurate, untimely and unreliable Line Loss Notifications to Z-TEL when Z-Tel customers switch to an alternative local exchange carrier. At the same time, Ameritech provides its own retail operations line loss information that allows Ameritech retail operations to immediately solicit customers that leave Ameritech." Z-Tel's letter demanded that "Ameritech cease soliciting customers with any Winback promotions until such time as Ameritech provides Z-Tel with line loss information that is identical to the line loss information that Ameritech provides to its retail operations."

On February 21, 2002, SBC Ameritech General Attorney Paul Dorin responded to Z-Tel's letter. A copy of Mr. Dorin's response is attached as Exhibit I to the Complaint. Mr. Dorin acknowledged Z-Tel's concerns regarding the accuracy and

timeliness of line loss notifications and reiterated Ameritech Illinois' commitment to satisfy those concerns. While Mr. Dorin disagreed with Z-Tel's discrimination claim and request that Ameritech Illinois discontinue its Winback marketing activities, he expressed Ameritech Illinois' willingness "to consider reasonable interim measures" to address Z-Tel's concerns. Mr. Dorin requested to meet with Z-Tel "at your earliest convenience."¹

Shortly after receipt of Mr. Dorin's letter, and without any further communication with Ameritech Illinois, Z-Tel filed its complaint by *edocket*, attaching a verification that was signed on February 20, 2002, the day before Ameritech Illinois' response. In the request for emergency relief in the Complaint, Z-Tel requests the Commission to "enter an order enjoining Ameritech from either soliciting Z-Tel customers that switch from Ameritech or from offering through any other means (such as telemarketing or channel sales representatives) 'Winback' offering, until such time as Ameritech provides Z-Tel with identical Line Loss Notification that Ameritech provides to its retail operations." Complaint, Par. 52.²

ARGUMENT

Section 13-515(e) provides that the Commission may grant emergency relief if an alleged violation of Section 13-514 "has a substantial adverse effect on the ability of the complainant to provide service to customers." The complainant must demonstrate, *inter*

¹ Ameritech Illinois is already working with Z-Tel to give them a snapshot of their customers in Ameritech Illinois' database, so that they can reconcile their accounts. Ameritech Illinois is also willing to discuss with Z-Tel whether there are any additional reports based upon disconnect orders that could be generated on an interim basis to mitigate Z-Tel's concerns.

alia, that it will suffer “irreparable harm in its ability to serve customers if emergency relief is not granted.” The alleged violation of the Act is Ameritech Illinois’ failure to provide accurate and timely line loss notifications to Z-Tel, when Ameritech’s retail operations allegedly receive more reliable and current information. However, the emergency relief requested will not improve the quality of line loss notifications nor improve Z-Tel’s ability to serve its customers. Consequently, the emergency relief requested is punitive rather than remedial and is beyond the scope of emergency relief authorized under Section 13-515(e).

Z-Tel alleges that Ameritech Illinois discriminates in favor of its own retail operations because its retail operations receive more accurate and timely line loss information than is provided to Z-Tel. Ameritech Illinois denies that it discriminates in favor of its retail operations. Furthermore, enjoining Ameritech Illinois from conducting any Winback marketing activities would not remedy alleged discrimination. Rather, it would result in discrimination in favor of Z-Tel. Ameritech Illinois would be prohibited from any Winback marketing activities at the same time that Z-Tel and other CLECs would be allowed to continue win back efforts for their customers.³

Z-Tel’s request for emergency relief is so overbroad that, if granted, it would violate the First Amendment. Ameritech Illinois’ Winback marketing activities are commercial speech protected by the First Amendment. *U. S. West, Inc. v. Federal*

² Z-Tel’s complaint seeks other relief as well. However, Z-Tel does not request emergency relief with respect to the other relief requested. Therefore, Ameritech Illinois will not address those requests in this response, but will address them in its answer to the complaint.

³ It is important to note that the alleged delays and inaccuracies in line loss notifications relate to only a percentage of all line loss notifications. In the Complaint, Z-Tel states that in December 2001, 73% of its line loss notifications were received within one day of disconnect, and only 8% were received 4 or more days after disconnect. Complaint ¶ 14. While Z-Tel identifies certain

Communications Commission, 182 F. 3d 1224, 1233 (10th Cir. 1999) (it is well established that nonmisleading commercial speech regarding a lawful activity is a form of protected speech under the First Amendment). The Commission may impose a valid restriction on commercial speech only if it has (1) a substantial state interest in regulating the speech, (2) the regulation directly and materially advances that interest, and (3) the regulation is no more extensive than necessary to serve the interest. *Id.* at 1233.

In the present case, the Commission's interest is in ensuring accurate and timely line loss notifications and avoiding alleged discrimination, not in regulating commercial speech. Restricting Ameritech Illinois' commercial speech (Winback activities) would not ensure accurate and timely line loss notifications and would discriminate against Ameritech Illinois. The relief requested by Z-Tel is far more extensive than is necessary or permissible to serve the interest sought to be protected (accurate and timely line loss notifications and avoidance of discrimination). Under these circumstances, the emergency relief sought clearly would violate the First Amendment.

Section 13-515(e) requires that any emergency relief granted must be economically reasonable. Z-Tel's complaints relate to only a small (but admittedly significant) percentage of the line loss notifications provided to Z-Tel. An Ameritech Illinois cross-functional team with representatives from Product Management, Information Technology, the Local Service Center and Account Management is working diligently to correct the processes and procedures that result in the line loss notifications

inaccuracies that Ameritech has identified in those line loss notifications (Complaint, ¶ 15), those inaccuracies also relate to only a small percentage of line loss notifications.

that are alleged to be untimely or inaccurate. Ameritech Illinois has asked to meet with Z-Tel representatives at their earliest convenience to make sure that Z-Tel has received all of its line loss notifications for prior periods and to make sure that all of the alleged inaccuracies have been identified. Under these circumstances, the emergency relief sought by Z-Tel, which would totally preclude Ameritech Illinois' Winback marketing activities, would not be economically reasonable.

The Commission is already addressing the line loss notification issues on a generic basis in its Section 271 investigation, ICC Docket No. 01-0662. That is an appropriate forum for consideration of the issues because it will insure uniform standards applicable to all carriers. Alternatively, the specific issues related to Z-Tel may be addressed in a tightly compressed time schedule in this docket as required by Section 13-515. The Commission could be in a position to make an informed judgment based upon record evidence on all the contested issues within as little as 75 days. On the other hand, the ALJ must rule on the request for emergency relief in two days, and the Commission within four days, based solely on the allegations in the verified complaint. Many of those allegations are purely conclusory and not supported by evidentiary fact. To grant emergency relief in these circumstances, with no opportunity for Ameritech Illinois to even answer, would deprive Ameritech Illinois of due process and would be unreasonable, unfair and not in the public interest.

Z-Tel cites three cases as support for the proposition that the Commission should grant emergency relief: (1) *In the matter of AT&T, et al v. Ameritech Corporation and Quest Corporation*, 13 FCC Rcd 14508, 1998 FCC LEXIS 3252, 12 Comm. Reg. (P & F) 837, *Memorandum Opinion and Order*, Rel. June 30, 1998); (2) *Cub v. Illinois Bell*

Telephone Company, ICC Docket No. 00-0043, Order, January 24, 2001; and (3) *MCI Telecommunications Corp. v. Illinois Bell Telephone Company*, ICC Docket No. 96-0075 & 0084 (consol.) (1996). These cases do not support the emergency relief requested.

The two Illinois Commerce Commission cases, *CUB* & *MCI*, did not grant emergency relief. Rather, they were decided on the full record after evidentiary hearings and briefs, which is the procedure that should be followed here. Furthermore, the Commission did not totally prohibit marketing activities in those cases (which is what Z-Tel requests here). The Commission only ordered Ameritech Illinois to correct certain marketing practices that the Commission found to be misleading.

In the *AT&T* case before the FCC, the conduct sought to be enjoined (provision of long distance service by Ameritech) was illegal. In the present case, the conduct Z-Tel seeks to enjoin (Ameritech Illinois' Winback marketing activities) is not only legal but it is protected commercial speech under the First Amendment.

WHEREFORE for all the reasons stated, Ameritech Illinois respectfully requests that Z-Tel's request for emergency relief be denied.

Respectfully submitted,

Illinois Bell Telephone Company
(Ameritech Illinois)

One of its attorneys

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Response to Request for Emergency Relief are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Certificate of Service

The undersigned, an attorney, certifies that he served a copy of this Verified Response of Illinois Bell Telephone Company to Request for Emergency Relief on each person on the attached Service List by electronic mail before 12:00 o'clock noon on February 24, 2002.

Service List Docket 02-0160

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